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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,740	09/28/2001	Christopher D. Batich	QMT-IRIA	4440
3775	7590	01/03/2006	EXAMINER	
ELMAN TECHNOLOGY LAW, P.C. P. O. BOX 209 SWARTHMORE, PA 19081-0209			ANDERSON, CATHARINE L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/965,740

Applicant(s)

BATICH ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 and 51-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 and 51-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/25/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of claims 1-46 and 51 in the reply filed on 25 July 2005 is acknowledged.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-14, 16-18, 20-28, 30-32, 34-42, 51-53, 57-60, 64-66, and 68-69 are rejected under 35 U.S.C. 102(b) as being anticipated by Calcaterra et al. (4,810,567).

With respect to claims 1, 16, and 30, Calcaterra discloses a material for absorbing biological fluids comprising a flexible substrate and a polymer of antimicrobial monomeric moieties, as described in column 2, lines 5-22. The material is non-hydrolyzable and non-leachable, as disclosed in column 1, lines 39-42. The material may comprise a superabsorbent material, as disclosed in column 6, lines 41-59.

With respect to claims 2, 17, 31, and 51, the monomeric moiety may be a quaternary ammonium, as disclosed in column 1, lines 29-35.

With respect to claims 3, 18, and 32, the monomeric moiety may be non-ionic, as disclosed in column 7, lines 5-20.

With respect to claim 5, the polymer is completely polymerized, and therefore has a degree of polymerization of 100.

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With respect to claims 6, 20, and 34, the material comprises an absorbent dressing, as disclosed in column 1, lines 20-23.

With respect to claims 7-8, 21-22, and 35-36, the flexible substrate comprises cellulose or synthetic polymers, as disclosed in column 6, lines 41-59.

With respect to claims 9-10, 23-24, and 37-38, the polymer is bonded to the substrate by a redox reaction catalyzed by a cerium-containing catalyst, as disclosed in column 7, lines 48-61, which results in an ether linkage.

With respect to claims 11-14, 25-28, and 39-42, the polymer is formed by polymerization of vinyl-containing monomers such as allyl amines and acrylamides, as disclosed in column 7, lines 6-22.

With respect to claims 52, 59, and 66, the moieties are bound by carbon-nitrogen bonds, as disclosed in column 5, lines 56-59.

With respect to claims 53, 57-58, 60, 64-65, and 68-69, the substrate is a nonwoven fabric comprising polyester, polypropylene, or polyurethane, as disclosed in column 6, lines 49-56.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 19, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calcaterra et al. (4,810,567) in view of Mao (6,346,125).

Calcaterra discloses all aspects of the claimed invention with the exception of the moieties comprising a biguanide. Mao discloses a material for absorbing fluids comprising a flexible substrate having an enhanced area comprising a polymer of antimicrobial monomeric moieties, as disclosed in column 1, lines 5-8. The flexible substrate comprises a nonwoven fabric of cellulose or synthetic fibers, as disclosed in column 9, lines 1-9. The antimicrobial may be a biguanide, as disclosed in column 4, lines 42-46. The treatment of the substrate with a quaternary compound or biguanide provides the fabric with improved inhibition of microorganisms and odors, as disclosed in column 9, lines 20-24. It would therefore be obvious to one of ordinary skill in the art at the time of invention to treat the flexible substrate of Calcaterra with a biguanide, as taught by Mao, to provide the fabric with improved inhibition of microorganisms and odors.

Claims 15, 29, 43-46, 54, 61, and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calcaterra et al. (4,810,567) in view of Kolb et al. (6,797,856).

Calceaterra fails to disclose dimethyldiallylammonium chloride (DADMAC). Kolb teaches the use of quaternary ammonium and DADMAC as equivalent compounds in the treatment of an absorbent material for antimicrobial purposes, as disclosed in column 6, lines 16-33. It would therefore be obvious to one of ordinary skill in the art at the time of invention to treat the flexible substrate of Calcaterra with dimethyldiallylammonium chloride, as taught by Kolb, since it is functionally equivalent to quaternary ammonium.

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With respect to claims 44-46, the flexible substrate of Calcaterra comprises cellulose, a wood fiber, or synthetic polymers, as disclosed in column 6, lines 41-59.

Claims 55 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calcaterra et al. (4,810,567) in view of Faries, Jr., et al (5,816,252).

Calcaterra discloses all aspects of the claimed invention with the exception of an indicator. Faries teaches the use of an indicator in a surgical drape to alert to the presence of leaks, as disclosed in column 2, line 65 to column 3, line 3. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the material of Calcaterra with an indicator, as taught by Faries, to alert to the presence of leaks.

Claims 56 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calcaterra et al. (4,810,567).

Calcaterra discloses all aspects of the claimed invention with the exception of a hemostatic agent. The use of hemostatic agents in wound dressings to inhibit bleeding are well known in the art. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the material of Calcaterra with a hemostatic agent to inhibit bleeding.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

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obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 6, 7-11, 15-17, 20-25, 29-31, 34-39, 43-46, and 51 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9-18 of copending Application No. 09/857,906. Although the conflicting claims are not identical, they are not patentably distinct from each other because a non-hydrolyzable and non-leachable bond is inherently less prone to degradation by acids or bases.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UNA  
cla  
December 23, 2005

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

